

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CIVIL CASE NO E003 OF 2024

WORAGUS FARMS LTD.....

.....PLAINTIFF

VERSUS

KENYA WILDLIFE SERVICE.....

.....DEFENDANT

R U L I N G

- 1.** Before this Court is a Preliminary Objection dated 9th January 2025 filed by the Defendant challenging the jurisdiction of this Court to entertain the present suit.
- 2.** It is contended that the Plaintiff's claim, being a claim for compensation arising from human-wildlife conflict, ought to have been filed pursuant to Section 25 of the Wildlife Conservation and Management Act (hereinafter "the Act")

before the County Wildlife Conservation and Compensation Committee, and not before the High Court.

3. It is contended that the Plaintiff had already elected the County Wildlife Compensation Committee as its first avenue for redress by lodging its claim for deliberation by the said Committee vide OB Number **KWS OB 05/26/07/2024**.
4. The defendant urges that the court has no jurisdiction to hear and determine this suit pursuant to Section 25 as read together with Section 117 of the Act.
5. The Defendant contends that Section 25 establishes a complete statutory mechanism for compensation and therefore ousts the jurisdiction of this Court.
6. The Plaintiff opposes the objection, contending that Section 25 of the Act does not oust the jurisdiction of the High Court in determining disputes premised under the Act and further that the present claim does not fall under Section 117 of the Act.
7. It is urged that the High Court has jurisdiction to entertain disputes arising from the Act and that Section 25 of the does

not oust the jurisdiction of the High court to adjudicate such disputes at the first instance. Further, that Section 25 is not a mandatory provision and it provides an alternative avenue for lodging claims under the Act to the indigent living in areas torn with Human-Wildlife conflicts.

8. The Preliminary Objection raises three issues:

- i. Whether the preliminary objection as framed meets the threshold of what in law is a preliminary objection.
- ii. Whether Section 25 of the Act ousts the jurisdiction of the High Court to entertain suits for compensation arising from wildlife-related injury or damage;
- iii. Whether the present suit falls within the ambit of Section 117 of the Act.

9. The principles governing a proper preliminary objection were settled in the celebrated decision of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd**, where Law JA stated that:

“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”

- 10.** Sir Charles Newbold P further emphasized that a preliminary objection must raise a pure point of law, argued on the assumption that the facts pleaded by the opposing party are correct, and must not call for the ascertainment of facts or the exercise of judicial discretion.
- 11.** The objection before the Court challenges the jurisdiction of this Court in light of an express statutory provision establishing a specific compensation regime. Jurisdiction is a pure point of law. As was authoritatively stated in **Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd**, jurisdiction is everything and without it a court must down its tools.
- 12.** The issue raised does not require this Court to interrogate contested facts or to receive evidence. It is premised on the pleadings as filed and on the interpretation and effect of Section 25 of the Wildlife Conservation and Management Act. If upheld, it would dispose of the suit *in*

limine on the ground of want of jurisdiction or failure to exhaust a statutory remedy.

13. Accordingly, I am satisfied that the objection raises a pure point of law on jurisdiction and statutory exhaustion, and therefore meets the threshold of a proper preliminary objection as set out in *Mukisa Biscuit*. The Court shall therefore proceed to determine it on its merits.

25. It is common ground that the Act creates County Wildlife Conservation and Compensation Committees mandated to receive and determine claims for compensation occasioned by wildlife.

26. The question for determination is whether the Plaintiff was obligated to first pursue the statutory mechanism before invoking the jurisdiction of this Court.

27. The doctrine of exhaustion of remedies is now firmly embedded in our jurisprudence. In **Speaker of the National Assembly v Karume**, the Court of Appeal held:

“Where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.”

- 29.** That principle has been consistently affirmed. In Geoffrey **Muthinja Kabiru & 2 Others v Samuel Munga Henry & 1756 Others**, [2015] KECA 304 (KLR) the Court emphasized that courts ought to exercise restraint and allow statutory bodies to discharge their mandates before judicial intervention.
- 30.** Similarly, in **Republic v National Environment Management Authority Ex Parte Sound Equipment Ltd**, [2011] KECA 412 (KLR) the Court underscored that where Parliament has provided a dispute resolution framework, parties must exhaust the same unless exceptional circumstances are demonstrated.
- 31.** The position was further clarified by the Supreme Court in **Mutanga Tea & Coffee Company Ltd v Shikara Limited & Another**, where the Court stated that statutory dispute resolution mechanisms are not mere procedural technicalities but are substantive routes deliberately established by Parliament.
- 33.** The Plaintiff's pleadings reveal that the loss complained of arose directly from wildlife attack. The relief sought is

compensation for that loss. On the face of it, the claim falls squarely within the statutory compensation regime contemplated under the Act.

34. No exceptional circumstances have been demonstrated to warrant bypassing the statutory mechanism. There is no allegation that the Committee is non-functional, biased, or incapable of granting an effective remedy.

35. This Court must therefore give effect to the legislative intention underlying the Act. To assume original jurisdiction in the first instance would undermine the statutory architecture established by Parliament.

36. It bears emphasis that the High Court's jurisdiction is not ousted; rather, it is deferred pending exhaustion of the statutory remedy. Judicial review or appellate recourse remains available once the statutory process has been invoked and concluded.

37. I am properly guided by the Court of Appeal decision in **Kenya Wildlife Service v Purity Kanini, [2024] KECA 1127 (KLR)**

where the court expressed itself on Section 25 of the Act as follows;

“In our considered view, the intention of the framers of Section 25 of the Act was to cause claimants who had been injured, or those persons whose relatives had died, by actions of wildlife, to benefit from the dispute resolution mechanism under the Act; a mechanism that was less cumbersome and which would benefit from the specialized knowledge on matters human wildlife interaction. The Respondent instead opted for the court which, quite unfortunately, did not have the original jurisdiction to hear and determine the dispute.....the learned judge fell into error when he dismissed the Appellant’s appeal by holding that the Chief Magistrate’s Court had jurisdiction to hear and determine the claim.”

38. On my part, I take the view that Parliament could not have contemplated two parallel avenues of compensation leaving it to parties to forum shop on where to lodge their claim. The Objects of the Act speak audibly on this issue. On conflict resolution, the Act’s objective was *“to manage human-wildlife conflict, providing compensation for injuries, deaths, and property damage caused by wildlife.”*

Therefore, the first port of call in a claim arising from human-wildlife conflict would be the County Wildlife and Conservation Compensation Committee.

- 39.** My attention has been drawn to the decision of the Court of Appeal in **Kenya Wildlife Service V Joseph Musyoki Kalonzo [2017] KECA 234 (KLR)** and to 3 High Court decisions on the matter (**Rose Ndinda Mutuku v Kenya Wildlife service [2018] KEHC 8232 (KLR)**, **Kenya Wildlife Service v Kinyua Ikabu[2019] KEHC 10866 (KLR)** and **Ann Ngugi Njiru v Kenya Wildlife Service [2021] KEHC 2586 (KLR)**).
- 40.** I have considered these authorities. Applying the principle of *lex posterior derogate priori*, I go by the decision in **Kenya Wildlife Service v Purity Kanini** (supra).
- 41.** It is instructive that indeed the Plaintiff lodged a claim before the County Wildlife Conservation and Compensation Committee vide **OB Number KWS OB 05/26/07/2024**. This particular fact was not disputed by the plaintiff. There is no evidence that the claim was concluded one way or the other and as such it is safe to infer that the claim is still live before the Committee. Certainly it is irregular for the Plaintiff to seek double compensation for the same claim in 2 different forums.

42. In the premises, and guided by the authorities cited above, I find that the suit offends the doctrine of exhaustion of remedies.

40. The Preliminary Objection succeeds.

41. The suit is hereby struck out with no orders as to costs.

Dated signed and delivered virtually this 18th day of February 2026.

A.K. NDUNG'U

JUDGE